Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JANUARY 1, 1977
THROUGH MARCH 31, 1977

WILLIAM J. BAXLEY, Attorney General

VOLUME 166

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From January 1, 1977

Through March 31, 1977

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1977 through March 31, 1977, is published in compliance with the provisions of Title 55, Section 228 Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. The section also requires that I send a copy of this report to each district attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, County, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

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January 5, 1977

Hon. Martha Kirkland
Judge of Probate
Escambia County Courthouse
Brewton, Alabama 36426

FILING TAX — MORTGAGES — PROBATE JUDGES

1. Open-end mortgages under which the lender may in the future lend additional amounts must be governed by the provisions of Title 51, Section 619(b), as amended, Code of Alabama, Recompiled 1958, unless the owner of such mortgages inserts in the mortgage recitations to the effect that no additional or subsequent advances will be made under the mortgage, or unless owner furnishes to Judge of Probate an affidavit to such effect.

2. The opinion of this office rendered to Judge Wiley Hickman on May 6, 1976, should be strictly confined to "Open-End Credit Plan-Revolving Loan Agreement" types of loans.

Opinion by Assistant Attorney General Loeb

Dear Judge Kirkland:

Your request for an official opinion, dated November 8, 1976, reads as follows:

"I am familiar with your opinion to the Judge of Probate of Etowah County dated May 6, 1976, concerning the applicability of Title 51, Section 619(b), Alabama Code of 1940, to an "Open-End Credit Plan — Revolving Loan Agreement Under the arrangement there discussed, a prospective borrower received a written line of credit for a specified amount of money.

From time to time there are presented to me real estate mortgages which in substance state that a debtor has received the proceeds of a loan of, say, $20,000 from Bank X and that certain real property is conveyed to Bank X as security for the repayment of that loan. The mortgage does not authorize the debtor to call on Bank X for any additional funds. The mortgage does provide that if the debtor desires additional loans and if Bank X is willing to make any future advances, then the real property covered by that mortgage shall also be collateral for such future advances. The bank offering the mortgage for record contends that Section 619(b) is not applicable, since under the instrument the debtor is not 'authorized to incur' any additional indebtedness.

Examples of the types of mortgages to which I have referred are enclosed, two of them being forms used by certain of the

banks in this county and one being used by many individual and corporate lenders with the appropriate phrase therein underlined in red.

I respectfully request your official opinion as to whether the provisions of Title 51, Section 619(b) apply. Specifically, is the bond referred to in that Code section to be required."

The recitations contained in the three mortgages attached to your request indicate clearly that such instruments are open-end mortgages under which the lender may in the future lend additional amounts to the debtor, even though such additional amounts are not specified in the mortgage. These instruments, and any others containing similar provisions, are therefore, strictly speaking, "open-end" mortgages falling within the purview of Title 51, Section 619(b), as amended, Code of Alabama, Recompiled 1958, and must be governed by the provisions thereof.

It is also equally obvious that those instruments referred to in the opinion rendered by this office on May 6, 1976 to Judge Hickman, though also technically open-end mortgages, are of a different nature. That opinion was intended to cover only those real estate mortgages given in secure a "revolving loan agreement" under which a line of credit with upper limit is established. As stated in said opinion, "Therefore, the procedure set out below is applicable only to the 'Open-End Credit Plan-Revolving Loan Agreement' type of loan." In view of this language and the peculiar facts surrounding these loans, we conclude that the procedure prescribed in said opinion of May 6 be confined strictly to such revolving loans.

If mortgages with open-end provisions such as the ones attached to your request are brought in for recordation, the provisions of Section 619(b), supra, are applicable, and petitions must be directed to the State Department of Revenue, along with a bond, as provided therein, unless the owner of the mortgage agrees to insert in the mortgage recitations to the effect that no additional or subsequent advances will be made under that mortgage, or unless the owner furnishes you with an affidavit to that effect.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

Overruled + Superseded by opinion issued to Charles Y. Cameron on 7-30-77.

January 5, 1977

Honorable K. K. Holmes, Clerk
Criminal Court of Jefferson County
507 Courthouse
Birmingham, Alabama 35203

Motor Vehicles — Traffic — Courts — Fines

A moving traffic violation is an offense which includes the actual operation or moving of a vehicle as an element of its corpus delecti. We list those included in Title 36 of the Code.

Opinion by Assistant Attorney General Marston

Dear Mr. Holmes:

Your December 22, 1976, letter requested our formal opinion in the following words:

> "Act #1205 of the 1975 regular session of the Legislature and certain administrative rules adopted by the Supreme Court on October 14, 1976, and amended November 22, 1976, provide rules of procedures, punishment and etc. in traffic cases. Since there is such a difference in the court cost involved and fines in moving and non-moving traffic violations, it would seem to me to be imperative that we have an official opinion as to what constitutes a moving traffic violation and what constitutes a non-moving traffic violation. For example: Is a charge of improper muffler, lights, etc. a moving traffic violation or is it a deficiency in equipment? Would it be a moving violation, under the law, governing the license of drivers and violations of revocation, suspensions, restrictions, overweight trucks, etc? These are examples of questions raised by the above cited act and rules.
>
> "If you would give me a list of what you hold to be moving and non-moving traffic violations. it would be a great deal of help in assuring that we get this very important segment of the district court on a proper direction when the district court assumes the handling of traffic violations on January 16, 1977.
>
> "This request is made pursuant to our telephone conversation December 22, 1976. I feel sure you will be called on for this information from the clerks of district courts over the State. I believe it will be as much help to them as it would be to me."

A moving violation is one the commission of which requires the operating or moving of a vehicle.

As you know, the Code of Alabama incorporates most of the traffic laws into Title 36, but some of these may be found elsewhere in the Code. In addition, there are local laws and city ordinances. Obviously, we cannot ferret out all of these and classify them by the date you need the information. Below, we list and classify those offenses listed in Title 36 of the Code. This should solve most of the problems and provide guidelines for classifying other offenses.

TABLE

Title 36, Section	Offense	Moving (M) or or Non-Moving (N)
2	Driving While Intoxicated	M
3	Reckless Driving	M
4	Loading from ramps, etc.	N
5 & 5(1)	Speeding	M
6	Failure to stop at railroad	M
7	Speeding on bridges	M
9	Driving on the wrong side	M
10	Same at intersection	M
11	Same on meeting other vehicles	M
12	Improper passing	M
13	Same	M
14	Failure to yield to overtaking vehicle	M
15	Following too closely	M
16	Improper Turning	M
17	Failure to signal	M
18 & 18(1)	Failure to yield the right-of-way	M
19	Failure to yield to an emergency vehicle	M
21	Running a stop sign	M
22	Improper passing of street cars	M
23	Driving through a safety zone	M
24	Improper passing of school bus	M
25	Parking on a highway	N
26 & 26(1)	Parking in prohibited zone	N
27	Improper parking	N
28	Improper Driving on Mountain Highway	M
29	Coasting	M
34	Operating a Vehicle with Improper Tire Equipment	M
35	Operating a Vehicle with Improper Brakes	M
36	Operating a Vehicle with Improper Horn	M
37	Operating a Vehicle with Improper Mirrors	M
38	Operating a Vehicle with Improper Windshield & Wipers	M
39(a) & 39(b)	Operating a Vehicle with Improper Muffler	M
39(c)	Operating a Vehicle with Improper Load	M
40	Operating a Vehicle with Improper Lights	M
40(6)	Operating a Vehicle with Improper Reflective Device	M
43	Operating a Vehicle with Improper acetylene lights	M
46	Parking a vehicle with improper lights	N
46(1)	Operating a wagon without reflectors	M

46(4)	Selling Improper Seat Belt	N
49	Maintaining an Unauthorized Highway Sign	N
50	Injuring Highway Signs	N
55	Person Under Sixteen Driving	M
56	Owner Permitting Person Under Sixteen Driving	M
58	Tampering with Parked Vehicles	N
58(2)	Violation of Minimum Speed Rule	M
58(4)	Improper Railroad Crossing By Heavy Equipment	M
58(5)	Improper Crossing of Intersection	M
58(7)	Passing in no-passing Zone	M
58(8)	Driving Wrong Way on one-way Road	M
58(9)	Improper Use of Lane	M
58(10)	Improper Use of Divided Highway	M
58(11)	Improper Entry to Limited Access Highway	M
58(12)	Violation of Restrictions on Limited Access Highways	M
58(13)	Making "U" Turn on Curve or Crest	M
58(15)	Failure to Yield to Pedestrian at Crosswalk	M
58(16)	Failure of Pedestrian to Yield to Vehicle	N
58(17)	Failure to Avoid Pedestrians	M
58(18)	Failure of Pedestrian to Use Right Half of Crosswalk	N
59(19)	Improper Use of Roadway by Pedestrian	N
58(20) & 58(21)	Violations by Bicycles	M
58(22)	Improper Riding of Bicycle	M
58(23)	Clinging to a Vehicle	M
58(24)	Improper Lane Usage by Bicycle	M
58(25)	Improper Load on Bicycle	M
58(26)	Improper Lights on Bicycle	M
58(27)	Improper Emerging From Alley	M
58(28)	Improper Parking	N
58(29)	Improper Passenger Carrying on Motorcycle	M
58(30)	Obstruction of Drivers View or Mechanism	M
58(31)	Crossing a Fire Hose	M
58(32)	Depositing Glass, etc. on Highway	M
58(34)	Selling Vehicle Without Safety Glass	N
58(36)	Disregarding Traffic Control Device	M
58(38)	Same by Pedestrian	N
58(42)	Failure to Carry Proper Warning Equipment	M
58(43)	Failure to Display Warning Devices When Vehicle Disabled	N

58(44)	Failure to Mark and Equip Vehicle Carrying Explosives	M
58(45)	Failure to Fasten Load	M
58(46)	Speeding Between "Men Working" Signs	M
58(47)	Failure to Heed Officer	M
58(48)	Violations by Riden Animals and Wagons	M
58(52a)	Throwing Missile into Vehicle (Felony)	N
58(53)	Failure to Exercise Care Toward the Blind	M
58(53c)	Unlawful Use of Handicapped Flag	M
65	Not Carrying Driver License While Driving	M
68	Refusal to Surrender Cancelled, Suspended or Revoked License	N
69	Driving Without a License	M
70	Driving While License Cancelled, Suspended or Revoked	M
70(1)	Driving in Violation of Restriction	M
74(b)	Making a false Affidavit to obtain Duplicate License	N
Violations of the Motor Vehicle Safety Responsibility Act:		
74(73)(a)	Failure to File Accident Report	N
74(73)(b)	Giving False Information	N
74(73)(c)	Driving While Suspneded or Revoked	M
74(73)(d)	Failure to Return License or Registration	N
75	Operating Vehicle Without Tag	M
75(2)	Violation of Rules of the Revenue Commissioner	N
75(18)	Securing and Affixing Improper Tag	N
76	Improper Truck Tires	M
77	Lack of Flag or Light on Load	M
78	Improper Tag	M
80	Operating a Trailer	M
81	Improper Towing of Disabled Vehicle	M
82	Violation of Special Restrictions as to Load or Use	M
85	Refusal to Permit Measuring, Weighting, etc.	N
89	Violation of the Restrictions as to Weight and Load	M
90(3)	Violation of Requirement for Exempted Vehicles	M
96	Renting Vehicle With Fraudulent Odometer	N
97	Renting Vehicle to Intoxicated Person	N
98	Tampering with Odometer of Rented Vehicle	N

99	Obtaining Possession of Vehicle by Fraud	N
100	Renting with Intent to Defraud	N
101	Failure to Return Rented Vehicle	N
102	Embezzlement of Rented Vehicle (Larceny)	N
103	Permitting Another to Drive Rented Vehicle	N
107	Violations of Laws Relating to Used Car Dealers	N
107(2)	Failure to Reimburse Dealer for Work Pursuant to Warranty	N
117	Leaving Scene of Accident Resulting in Death or Injury	M
128	Leaving Scene of Accident	M
137	Violation of Motorcycle Laws (sections 129-136)	M
141	Violation of Helmet Laws (Sections 138-140)	M
142	Allowing Juvenile to Ride Motorcycle Without Helmet	N
151	Violation of Driver Training School License Act	N
202	Unauthorized Use of Motor Vehicle (Felony)	M
203	Unauthorized Receiving or Disposing of Vehicles (Felony)	N
204	Unauthorized damaging or tampering Vehicles	N
206	Making a False Report of a Theft or Conversion	N
207	Removing, etc. Identification Number on Vehicle	N
208	Violations Relating to Junk Vehicles	N
	General Criminal Provisions:	
210	Aiding and Abetting	N
211	Felonies	N
212	Misdemeanors	N

We hope what has been written proves helpful.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

January 11, 1977

Honorable Edwin A. Strickland
County Attorney
213 Courthouse
Birmingham, Alabama 35203

Judicial Article — Courts — Fees

Compensation under Judicial Article of individuals effecting service in district and circuit courts discussed.

Opinion by Assistant Attorney General Knight

Dear Mr. Strickland,

The Attorney General received your request for an opinion from this office concerning payment of certain individuals who perform services to the court under the uniform fee system initiated by the Judicial Article Implementation Act for the circuit and district courts.

You asked the following question concerning Section 16-113 of the Judicial Article:

"1. Does Article 16-113(d) provide authority for payment of all service of process in the district and circuit courts, i.e., Defendant service fees [16-113(a)], Witness and subpoena fees [16-113(b)], Post-judgment fees [16-113(c)], or merely authority for 'Additional Post-judgment fees' [16-113(d)]?

"2. If the answer to 1 above is 'additional post-judgment fees' only, who pays the service fees for the other categories of service?

"3. Does the specific inclusion of only 'constables and coroners' within said paragraph 16-113(d) exclude payment to:
(a) deputy constables,
(b) sheriff deputies,
(c) attorneys,
(d) other private individuals appointed by the court to effect service pursuant to Rule 4(a) 3(A) of the Alabama Rules of Civil Procedure?"

Regarding your first question, in my opinion, Section 16-113 of the Judicial Article in effect does provide for the payment of all service of process fees in district and circuit courts except that process served by sheriffs and their deputies. This section provides for payment by the county from the county treasury of those fees to be given to coroners and constables for their services to the courts in accordance with Title 11, Sections 37 and 39, **Code of Alabama** 1940, 1975 Interim Supplement. These additional post-judgment fees are entirely different from those fees provided for in Sections 16-113(a), (b) and (c), i.e., defendant services fees, witness and subpoena fees and post-judgment proceeding fees, which are to be collected as provided in these sub-

sections and distributed as directed by Section 16-114, while the "additional post-judgment fees" of 16-113 are fees to be paid out by the county to constables and coroners for services rendered to the court by them.

Furthermore, I am of the opinion that other individuals, except sheriffs, all of whom are now on a salary basis and those sheriffs' deputies who have been placed on a salary basis by a local act of the State Legislature, which are appointed by the court under Rule 4(a)3(A) of the Alabama Rules of Civil Procedure, to effect service would be compensated by the county in the same manner as coroners and constables under Section 16-113(d). These individuals would include deputy or special constables appointed by the court. Any compensation for service to the district and circuit courts rendered by sheriffs and deputy sheriffs would be considered to be included in their salary.

I hope that this has sufficiently answered each of your questions.

If our office can be of further assistance to you, please do not hesitate to let us know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

January 25, 1977

Honorable Walter Owens
Member, House of Representatives
197 Court Square, West
Centreville, Alabama 35042

TAX COLLECTORS — OFFICERS AND OFFICES — GOVERNOR

The authority to appoint officers including vacancies in the office of tax collector is vested in the Governor only, Sections 176 and 177, Title 41, Code of Alabama 1940, Recompiled 1958.

Persons who continue to function and perform the duties in the tax collector's office after the office is vacant and before the Governor appoints a successor are performing a governmental function in the name of the sovereign and the sovereign cannot be estopped in the performance of a governmental function. Opinion of the Attorney General, Volume 30, p. 65, insofar as it is in conflict with the immediate foregoing conclusion is superseded.

There is no time limit specified in which the Governor must act to fill the vacancy.

Opinion by Assistant Attorney General Burson

Dear Mr. Owens:

Your request for opinion dated December 21, 1976, with the attached memorandum from the Legislative Reference Service sets forth pertinent sections of the code in regard to filling vacancies in public offices and cities cases concerning the office of tax collector. The specific questions you ask are as follows:

1. "In view of these statutes and the attorney general's opinion, supra, when the office of the tax collector becomes vacant, because the former tax collector is elected to and assumes another county office, and the governor does not act to fill the position, who has the responsibilities and functions of that office in the iterim?"

2. "Is there a time limit in which the governor must act to fill such vacancy?"

3. "Is there any other authority, outside of the governor, who can act to fill such vacancy, or who can delegate the duties of tax collector to be carried out by another officer or office (e.g., tax assessor, probate judge, et cetera)?"

Prior to answering your first request, above, it is necessary to set out the pertinent statutes and the attorney general's opinion which you cite in your request for opinion.

Sections 176 and 177, Title 41, Code of Alabama 1940, Recompiled 1958, provide that the Governor shall have the power to fill vacancies in all state, county and municipal offices. Section 176, supra, provides as follows:

> "Vacancies in all state and county offices are filled by appointment of the governor, except as otherwise provided; the appointees must be commissioned, and they shall hold their offices for the unexpired term, and until their successors are elected and qualified."

Section 177, supra, provides as follows:

> "Whenever any office of the state, of any county, or municipality thereof, is vacant from any cause, and there is no way provided by law for the filling of such vacant office, the governor shall appoint a qualified person to fill the unexpired term of such office.

An Opinion of the Attorney General, Biennial Report 1930-1932, p. 706, concludes that the power to appoint a person to a vacancy as county tax collector rests with the Governor. The opinion gives a comprehensive survey of the statutes relating to the subject and points out that Act 12, approved November 28, 1868, was the first statute which dealt with appointment of tax collectors, that the Governor was given authority to appoint in the Act of 1868 and this authority has continued without change and is now embodied in Section 176 and

177 of the Code, supra. The same conclusion is reached in Quarterly Report of the Attorney General, January - March, 1936.

Thus, only the Governor has authority to appoint a person to a vacancy in the tax collector's office.

The Opinion of the Attorney General, Volume 30, p. 65, which you cite in your request for opinion declares that a deputy appointed by a tax collector no longer in office cannot act subsequent to his principal relinquishing his office, that the deputies subsequent acts are not valid.

I cannot concur in the conclusion expressed in the Opinion of the Attorney General, Volume 30, supra. Such a conclusion results in the estoppel of the sovereign, that is to say the people, in the performance of a major governmental function, the collection of taxes. Any persons employed in the tax collector's office who continue to carry out the duties of the office are acting under color of authority and within the purview of constitutional authority. Section 100, Constitution of Alabama of 1901, provides, in substance, that fixed debts due the State of Alabama may be extinguished only by payment thereof. Taxes become fixed debts due the State and the sovereign cannot be estopped from collecting these debts because the persons in the tax collectors office are acting in an ad hoc capacity. Several cases support the foregoing conclusion.

The opinion in **State v. Maddox Tractor & Equipment** Co., 69 So.2d, 426, states, in part, as follows:

> "In assessment and collection of taxes, State is acting in its governmental capacity and cannot be estopped with reference to enforcement of taxes. Const. 1901, Section 100."
>
> * * *
>
> "In view of constitutional provision prohibiting remission, release, postponement or diminution of any obligation or liability of person to state except by payment thereof, state taxing authority has no discretion in matter of assessment and collection of taxes due under valid statute. Const. 1901."

In **State v. Hunt Oil Company,** 273 So.2d 207, the Court of Civil Appeals stated:

> "We further note that it appears to be the law in this state that estoppel against the State is not favored. Union Central Life Ins. v. State, 226 Ala. 420, 147 So. 187. In the case of State v. Maddox Tractor and Equipment Co., 260 Ala. 136, 69 So.2d 426, it was said that in the assessment and collection of taxes the State is acting in its governmental capacity and cannot be estopped in the enforcement of taxes."

The Alabama Court of Civil Appeals in the recent case of **Boswell v. Abex Corporation,** 317 So.2d 317, reiterated, in part, the conclusion stated in the two preceding cases. Thus the persons in the tax collectors office

who are carrying out the functions of the tax collector are acting in the name of the sovereign and they cannot be estopped in their tax collecting functions even though the Governor has not appointed a person to fill the vacant office of Bibb County Tax Collector.

In reviewing Sections 176 and 177, supra, and the annotations of authority cited thereunder, I conclude that only the Governor has the authority to appoint a person to fill the vacancy in the Tax Collector's office and there is no specified time limit in which he must make the appointment.

In summary the answer to your questions are as follows:

1. When the Governor has not appointed a person to fill the vacancy in the Tax Collector's Office, the persons in the office who are carrying out the functions and duties of the office are acting in the name of the sovereign and their acts are valid because the sovereign cannot be estopped in carrying out a governmental function such as collection of taxes.

2. There is no specified time limit in which the Governor must make the appointment.

3. No authority other than the Governor may appoint any person to carry out the duties of Tax Collector.

Yours sincerely,

WILLIAM J. BAXLEY
Attorney General

January 26, 1977

Honorable M. V. Rasmussen
Deputy District Attorney
Tenth Judicial Circuit
120 2nd Court North
Birmingham, AL 35211

Child Support — Courts — District Attorneys

Court order to make periodic child support payments under Code of Alabama, Title 27, Section 12(4) not limited to twelve-month period.

Opinion by Assistant Attorney General Vanzetia Durant

Dear Mr. Rasmussen:

Your request for an opinion dated 17 November 1976 is as follows:

1. Is a court order to make periodic payments for child support entered in accordance with Code of Alabama 1940,

Title 37, Section 98, recompiled 1958, limited by law to a twelve month period?

2. Is a court order to make periodic payments for child support entered in accordance with Code of Alabama 1940, Title 27, Section 12(4) recompiled 1958, (1973 cumulative supplement), limited by law to a twelve month period?

Your reference to periodic payments under Title 37, Section 98 is somewhat confusing. Assuming a typographical error, the response addresses such payments cognizable under Title 34, Section 98.

Title 34, Section 98, Code of Alabama, Recompiled 1958, provides that after a conviction of nonsupport, the presiding judge may, in his discretion, suspend the sentence and direct the defendant to make periodic payments to the clerk for the use of his child or children. Although Section 90 sets the maximum sentence at twelve months at hard labor, courts have the power and authority to set a period of probation longer than the sentence imposed.

Moreover, the fact that the Legislature explicitly limited to one year the requirements that the defendant personally appear while on probation when requested, but failed to impose a similar limitation upon "further comp[liance] with the terms of such order of support" buttresses the conclusion that payments may be extended beyond one year.

Title 42, Section 24, Code of Alabama, Recompiled 1958 provides:

> "The period of probation or suspension of execution of sentence shall be determined by the court and such period may be continued, extended or terminated."

Periodic payments under Title 27, Section 12(4), Code of Alabama, Recompiled 1958, present a different question. Under that section after an adjudication of paternity, the father is thereafter "subject to all obligations for the care, maintenance, and education of such children and to all the penalties for failure to perform the same." A one year limitation is not countenanced by this section, as is clarified in **Moore v. LeFlore,** 288 Ala. 315, 318, 260 So. 2d 585 (1972). Inasmuch as a parent is obligated to provide for the support of his child[ren] under the age of eighteen, it is conceivable that the life of an order issued pursuant to Title 27, Section 12(4), is coterminous with the number of years before the child in question reaches eighteen.

It is my opinion that neither statute restricts the efficacy of a child support order to a twelve-month period. If this office can be of further assistance, please write us.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

February 3, 1977

Colonel E. C. Dothard
Director
Department of Public Safety
State of Alabama
Public Safety Building
Montgomery, Alabama 36130

Public Safety Department — Driver Licenses — Courts — Judicial Article

The Judicial Article does not take authority to regulate driver licenses away from the Director of Public Safety.

Opinion by Assistant Attorney General Brunson.

Dear Colonel Dothard:

Reference is made to your letter of January 26, 1977, in which you request an opinion of the Attorney General. Your letter of request reads as follows:

> "It is necessary that this department seeks clarification and guidance on a portion of Act 1205, 1975 Regular Session commonly known as the Judicial Article Implementation Act. The sections in question are found in Sections 4-106(b) and 8-104(e) and read in part, '. . . provided further that the court may enter an order authorizing the defendant to drive under the conditions set forth in the order.'
>
> "Section 68, Title 36, Code of Alabama as amended provides for the mandatory revocation by the Director of Public Safety of the drivers license of any driver convicted of offenses enumerated in that section. Apparently this section and numerous later court decisions clearly indicate that it is the mandatory duty of the Director to revoke a drivers license under certain conditions and no discretion on the part of the Director is involved. In addition, Section 74(58), Title 36, Code of Alabama requires that proof of financial responsibility be given in certain cases after a drivers license has been suspended or revoked. Failure to file proof as required results in the suspension of the vehicle license plates of all motor vehicles registered in the name of such person required to furnish proof.
>
> "My questions are as follows:
>
> "1) Are the courts of this state authorized to determine a person's fitness to operate a motor vehicle on the highways of this state and through court order to permit a defendant to drive, or does this authority remain with the Director of Public Safety as provided in Section 63, Title 36, Code of Alabama?

(2) Upon conviction of an individual for an offense requiring revocation of a drivers license and proof of financial responsibility, may the Director of Public Safety take the actions incumbent upon him by statute even if a court order is issued pursuant to Sections 4-106(b) and 8-104(e)?

"3) Do Sections 4-106(b) and 8-104(e) of Act 1205 permit judges to apply additional sanctions beyond those granted to the Director of Public Safety to defendants by restricting their authority to operate a motor vehicle on the highways of this state or do the court orders in any manner dilute, supersede, replace or change the authority of the Director of Public Safety to administer the driver license laws of this state?

"In view of the fact the Sections of Act 1205 presenting these questions became effective January 17, 1977 and since conviction reports from district courts requiring revocation or suspension action against defendants are being received at this time, it is essential that this department receive guidance in this area as soon as possible.

"Your cooperation in expediting this request will be appreciated."

There is nothing in the new Judicial Article which takes away from the Director of Public Safety the authority granted in Title 36, Section 68, Code of Alabama 1940, Recompiled 1958. This Section remains in full force and effect and the authority to cancel, suspend, or revoke the driver license or permit of an offending driver remains with the Director of Public Safety.

Your second question is answered in the affirmative. The Court orders which may be issued pursuant to Section 4-106(b) and 8-104(e) of the Judicial Article, do not have any effect on cancellations, suspensions or revocations authorized under Title 36, Section 68, supra. The Judicial Article provisions which allow a defendant to drive under the conditions set forth in the order are changes in the punishment authorized by the Court. Thus, the power of the Court to prohibit a person from driving contained in Title 36, Section 2, Code of Alabama 1940, Recompiled 1958, is changed by the Judicial Article to authorize the Court to prohibit the person convicted from driving except under the conditions set forth in the Court's order.

The Judicial Article in no way dilutes, supercedes, replaces or changes the authority of the Director of Public Safety to administer the driver license laws of this State. Sections 4-106(b) and 8-104(e) do broaden the powers the Courts had prior to the Article by allowing the Courts to prohibit a person from driving under Title 36, Section 2, supra, and under the Article, issuing an order allowing the person to drive under conditions set forth in the order.

Thus, the Judicial Article changes are of sanctions imposed by the Court rather than those granted to the Director of Public Safety.

It is hoped this opinion satisfactorily answers your request.

Very truly yours,
WILLIAM J. BAXLEY
Attorney General

February 7, 1977

Honorable Charles A. Boswell
Commissioner of Revenue
State of Alabama
Montgomery, Alabama

AD VALOREM TAX — REAPPRAISAL PROGRAM

Section 9 of Act 160, Section 933 of Title 51, Code of Alabama 1940, Recompiled 1958, Cumulative Pocket Part, provides the method of the payment of the costs of any program for equalization of ad valorem taxes, including the maintenance of the program implemented under the provisions of Act 160 of the Third Special Session of the 1971 Legislature, and maintained by the Department of Revenue and the tax assessors of the several counties of the State. Opinion by Assistant Attorney General Philip Davis.

Dear Mr. Boswell:

Your request for an opinion of this office dated February 7, 1977, respecting whether or not Section 9 of Act 160 of the Third Special Session of the the 1971 Legislature (Title 51, Section 933, Code of Alabama 1940, Recompiled 1958, Cumulative Pocket Part) provides authority for proration of the cost of maintaining the appraisal program in each of the several counties of this State after the initial appraisal program is completed is answered in the affirmative.

Act 160 of the Third Special Session of the 1971 Legislature construed in pari materia with Title 51, Sections 131 and 133, Code of Alabama 1940, Recompiled 1958, Cumulative Pocket Part, imposes upon the Department of Revenue the duties of supervision and control of the valuation, equalization and assessment of property in this State. This Act was passed by the Legislature to achieve equalization through a state-wide reappraisal program by which all property is to be assessed according to the fair and reasonable market value thereof. It is the duty of the Department and the tax assessors of the several counties of the State of Alabama to maintain this equalization in the future. Section 9 of Act 160 provides:

> "The cost of **any program** for the equalization of ad valorem taxes shall be pro-rated by each county governing body to each agency therein on the basis of the proportion of the monies received by each agency in the county to the total

amount received by all agencies of such county."
(Emphasis supplied)

This is the method provided by the Legislature for the payment of the costs of any program for the equalization of ad valorem taxes and obviously includes by its terms the maintenance of the program implemented under the provisions of Act 160 as well as Sections 131 and 133 of Title 51, Code of Alabama 1940, Recompiled 1958, Cumulative Pocket Part. Act 160, supra, amplifies the provisions of Sections 131 and 133 and provides the means by which the continuing program will be carried out and financed under Sections 131 and 133.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

March 16, 1977

Honorable A. B. Clark
Houston County Sheriff
Sheriff's Office
Dothan, Alabama 36301

Prisons and prisoners — Sheriffs — Board of Corrections

The Board of Corrections must administer Act 182, 1976 legislative session.

Opinion by Assistant Attorney General Bowen.

Dear Sheriff Clark:

Your request for an official opinion is as follows:

"I am writing to ask for an Attorney General Ruling on Act No. 182. We have a number of prisoners serving jail sentences for county time here in Houston County. We also have a number of state prisoners that are incarcerated here in Houston County. I have read a copy of your opinion which was written to Mr. John C. Locke, Jr., Commissioner, Board of Corrections, Montgomery, Alabama, on September 8, 1976. In the Act it stated that the Board of Corrections is hereby empowered to create within the existing classification system a new classification which would authorize a minimum deduction from the term of the sentence of exceptional inmates of two days for each one day served.

"Please advise if the Sheriff, who is the custodian of the jail and has the prisoners in charge, can allow this good time."

It is the opinion of the office that the legislature of Alabama granted the Board of Corrections the administrative responsibility for execu-

tion and implementation of Act 182. In fact, the various sections of this Act make several references to the Board's descretion in granting these "good time" deductions. It is, therefore, the responsibility of the Board of Corrections to allow "good time" deduction under Act 182 rather than any other office or agency.

Please note that this opinion does not address the question of whether Act No. 182 is applicable to county prisoners. An opinion on that question is currently being prepared for Sheriff Holcomb in Talladega County and you will be provided a copy upon its release.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 18, 1977

Honorable Thomas A. Snowden, Jr.
Judge of Probate
Shelby County Commission
P.O. Box 467
Columbiana, Alabama 35051

Constables — Court-Costs and Fees

Payment of Fees to Constables for services to Court discussed

Opinion by Assistant Attorney General Knight

Dear Judge Snowden:

I am replying to your request for an opinion from the Attorney General concerning the use of constables to serve papers for the district and circuit courts and the payment of fees to the constables for their services to the Court.

You ask the following questions:

> Under the new Rules of Civil Procedure and specifically Rule 4.1 it is provided that the Clerk may give papers for service to either the sheriff or to the constable. No provision is made in that section for payment of the constables should the court or the Clerk elect to use the constable in serving such papers. Section 16 sub-section 145 of Act No. 1205 implementing the judicial article amends Section 39 of Title 11 to provide for fees allowable to constables. The last quoted section, after providing for specific fees in situations or cases involving less than $20.00 the section goes on to read that the fees to the constable shall be the same as sheriff's fees on December 18, 1973, when performing the like or same

services. No apparent provision is made as to how this will be paid, from what source, or whether at the time of the actual service or at the conclusion of the case. It is also not provided as to whether or not these additional charges which would result if service were made by the constables would be added on to the case at the conclusion of the case in addition to the amount collected under the uniform fee system now in effect.

Thus, our questions are as follows:

(1) Is the use of constables to serve such papers discretionary or is it mandatory in any circumstance? If the use of constables is simply discretionary, who makes the decision as to their use?

(2) If the use of constables to serve such papers results in the payment of additional fees and costs by the court which are not now paid to the sheriff's office, who shall pay such additional fees and costs, when shall they be paid, and is it proper to add such additional costs back as court costs at the conclusion of litigation (all in addition to the initial court costs collected under the unified fee system at the commencement of the suit?

In answer to your first question the use of constables to serve process for the court is discretionary within the decision of the Clerk of the Court. In accordance with Rule 4.1 (b)(1), the clerk may deliver the process, complaint and other papers to be served to either the sheriff or constable of the county in which the party to be served lives or may be found, or some other person designated by the Court to make service of process.

Regarding your second question concerning payment of fees to constables who serve process, Section 16-113(d) states that fees due to constables for their services to the county are paid by the county from the county treasury upon a sworn statement certified by the clerk. It further states that this payment shall not affect the collection and distribution of the uniform fees of the court. The fees paid to constables are not included in the court cost or court fees but are merely paid by the county. The county is reimbursed for the payment of these fees through the distribution to the county of its share of those additional fees collected in civil cases found in 16-113(a)(b)(c) of the Judicial Article. The method for distribution of these additional fees is found in the following Section 16-114. The constables are paid the fees due them in accordance with Title 11, Section 39, **Code of Alabama** 1940, Recompiled 1958, as amended 1975, upon returning the process to the clerk with his endorsement that it has been delivered and obtaining from the clerk a sworn statement certified by the clerk to that effect. The constable then presents this statement to the county treasurer who pays him his fees.

If our office can be of further assistance, please do not hesitate to contact us.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 22, 1977

Honorable Bingham D. Edwards
State Senator
Holly Street at 2nd Avenue
P. O. Box 632
Decatur, Alabama 35601

PUBLIC UTILITIES — CABLE TELEVISION

Applicability of Title 48, Section 417(6), Code of Alabama 1940 (Recomp. 1958) to Cable Television facilities.

Opinion by C. Wiston Sheehan

Dear Senator Edwards:

Your inquiry of February 17, 1977, has been received and considered.

Title 48, Section 417(6), Code of Alabama 1940 (Recomp. 1958) reads as follows:

> **"Use or connection of prohibited instruments; manipulation, tampering or interference with communication lines, etc.—** It shall be unlawful for any person to use, connect or cause to be connected or to conspire with, aid or assist another to use, connect or cause to be connected, any prohibited instrument as defined by sections 417(4) to 417(12) of this title, or in any manner to manipulate, tamper or interfere or to conspire with, aid, assist or cause another to manipulate, tamper or interfere, whether physically, acoustically or by induction, to or with any communication line, channel, device or facility of a supplier of telephone, telegraph or other telecommunication service, or to attempt any of the foregoing."

"Telecommunication" is defined by **Webster's Third New International Dictionary,** as "communication at a distance (as by cable, radio, telegraph, or television)". The words used by the Legislature in said Section, "facility of a supplier of . . . other telecommunication service" would therefore include Cable Television facilities. In my opinion, Title 48, Section 417(6), Code of Alabama 1940 (Recomp. 1958) is applicable to Cable Television facilities. I trust this information will be of assistance to you.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 24, 1977

Mr. Fred E. Zeigler
State Comptroller
Capitol
Montgomery, Alabama

Judicial Articles — Comptroller — Employers and Employees — Courts

Comptroller is required to pay from the State treasury the employer contribution to maintain the various fringe benefits of court personnel.

Opinion by Chief Assistant Attorney General Turner

I have your request for an opinion of this office relating to Act No. 1205, Acts of Alabama, Regular Session 1975, Approved October 10, 1975. This Act is commonly referred to as the Judicial Article Implementation Act and your question is directed towards §7-106(c) which provides:

> "Other benefits. The administrative office of courts shall, after consultation with the state and local personnel systems, adjust benefits of court personnel joining the state personnel system on October 1, 1977, including clerks, registers and judges, to assure continuation of existing employee benefits at the same rates and amounts as **were in effect for such employees on August 1, 1975.** The comptroller shall, subsequent to the establishment of benefits and employer cost thereof, pay the employer contribution."

You state that pursuant to this section, the Department of Court Management has conducted a survey of those officials and employees coming into the State System either in January 16, 1977 or on October 1, 1977. The results of this survey reveal that certain counties are or were paying for fringe benefits such as life insurance, health and hospital insurance, cancer insurance, and accident insurance for these officers and employees.

Your questions are as follows:

> "Since the state only provides its employees with a group health insurance plan, is it legal for me as state comptroller to pay insurance premiums for this class of employees covering premiums for life insurance, cancer insurance, or any other insurance not provided state employees, and health and hospital insurance where the rates and amounts exceed the rates of those paid by the state?
>
> If your answer to the above question is in the affirmative, should the effective date be August 1, 1975, for the benefits and premium costs of all employees, or should the effective date be January 16, 1977, for those employees joining the state

on this date, or October 1, 1977, for those employees joining the state on this date?"

As a general statement of policy, this office firmly believes that all State employees should be given equal treatment and that includes benefits. We do not, however, make the law but can only give you our best judgment or opinion on the application of the laws as passed by the Legislature. In so doing, we must apply the tests established by the courts which govern legislative interpretation and constitutionality. If we were free agents in these matters and could write upon a clean slate, there are many sections in this Act which we would undoubtedly repudiate as being against the best interests of the people of Alabama, but as stated we cannot and do not exercise such freedom.

Accordingly, having applied the appropriate measurements to the above cited Section, it is my opinion that you as Comptroller must pay from the State treasury the employer contribution to maintain those benefits which these individuals were receiving on August 1, 1975.

The effective date for you to begin making such payments is the date the employee joins the State System — either January 16, 1977, or October 1, 1977. All of these, however, use August 1, 1975, as the base for determining the benefits due.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 24, 1977

Honorable R. H. McSwean
Judge of Probate of Henry County
P. O. Box 457
Abbeville, Alabama 36310

Probate Judges — Fees — Wills

Probate Judges not entitled to 15c fee per hundred recorded words in wills under 1975 statute

Opinion By Assistant Attorney General Knight

Dear Judge McSwean:

The Attorney General received your request for an opinion from this office concerning certain fees received by a probate judge.

You pose the following question:

> Title 11, Section 29(1) was adopted as it appears in the code on November 27, 1976, setting out the fees allowed Probate Judges for certain services. Prior to the adoption of this act, Probate Judges received, in addition to specific fees for specific

services, an amount of .15c per hundred (words) for recording probate proceedings. The fees set forth in this new law provide for a fee of $30.00 for the probate of a will, whether contested or not. (Parenthesis added)

Is the Probate Judge entitled to an additional amount for recording the proceedings to that set forth for services rendered in the probate of a will and other services set forth in Title 11, Section 29(1)?

Your question is to be answered in the negative.

It is true that by the statute enacted in 1953 which set forth the fees of a probate judge that the probate judge was allowed to receive fifteen cents (15c) per hundred words recorded in the probating of a will and in other services. Title 11, Section 29, Code of Alabama 1940, Recompiled 1958. However, Act No. 556 of the 1975 Legislature replaced the 1953 statute and set forth a new list of fees allowed the probate office. This list was further amended by Act No. 150, Fourth Extra Session of the 1975 Legislature. The 1975 statutes make no mention of fifteen cent fees per hundred recorded words and this fee is not set out in any other law.

Title 11, Section 1, **Code of Alabama** 1940, Recompiled 1958, states that no fee is to be demanded or received by any official unless expressly authorized by law. Therefore, a probate judge is not entitled to a fee of fifteen cents per hundred recorded words in wills or certain other documents.

If our office can be of further assistance, please do not hesitate to contact us.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

March 30, 1977

Sheriff Griffin A. Holcomb
Talladega County
Talladega, Alabama 35160

Prisoner and Prisoners — Sheriffs

1. Act No. 182, Alabama Acts 1976 does not apply to County Prisoners and no County Prisoner may be awarded incentive good time.

2. County Prisoners confined at hard labor for the county are covered by Act No. 214, Third Special Session, Alabama Acts 1975, and may be awarded ordinary good time under its provisions.

3. Sheriffs have the responsibility for administering the provisions of Act No. 214, Third Special Session, Alabama Acts 1975, as it applies to County Prisoners.

4. Sheriffs have the authority to release County Prisoners confined at hard labor for the county after the expiration of their sentences shortened by time off for good behavior which they have received and not forfeited.

Opinion By Assistant Attorney General Carnes

Dear Sheriff Holcomb:

In a letter dated January 12, 1977, you requested the following:

> Would you please send me an Attorney Generals opinion on the good time law for County Prisoners that are serving hard labor sentences?
>
> Will their good time be compiled the same as a State Prisoner? What are the rules pertaining to the release of County Prisoners? Who has the authority to release the County Prisoners on their good time, the Sheriff or the Judge?

As is explained in this opinion, County Prisoners are not entitled to the same time off for good behavior as State Prisoners, because the incentive good time act applies only to State Prisoners. On the other hand, the ordinary good time act does apply to County Prisoners who are confined at hard labor for the County, and Sheriffs are responsible for administering that act as it applies to them. A Sheriff may release such a prisoner on his good time.

Fundamental to any consideration of good time sentence reduction is a recognition that no Sheriff or other official may release or discharge a convict otherwise than as required by law. Title 45, Section 106, Code of Alabama 1940 (Recompiled 1958). No convict on the municipal, county, or state level may be awarded any time off his sentence for good behavior unless it is expressly authorized by law.

Existing law authorizes two types of sentence reduction for good behavior. Since 1943, Alabama has had a statute providing for what is now commonly referred to as ordinary good time. The latest amended version of this ordinary good time statute is Act No. 214, Third Special Session, Alabama Acts 1975, a copy of which is enclosed. In 1976, the Legislature enacted Act No. 182, Alabama Acts 1976, which provides for additional sentence reduction in the form of what is now commonly referred to as incentive good time. While Act No. 214 applies to certain County Prisoners, Act No. 182 applies only to State prisoners.

No County Prisoner, regardless of whether he is confined at hard labor and regardless of how well he behaves, can earn incentive good time, because Act No. 182 does not apply to County Prisoners. Although Act No. 182 is poorly written, there are no fewer than three indications in the act that it was intended to apply only to State

Prisoners. First, in Section 1 of the act, its purpose is limited to encouragement of prison discipline and nothing whatsoever is said about county jail discipline. Secondly, in describing the misconduct which may result in a forfeiture of incentive good time, Section 5 of the act specifically lists violation of a prison rule or regulation, but it does not mention county jail rules or regulations. Finally, and most importantly, the act empowers the State Board of Corrections to grant incentive good time and says nothing about sheriffs or any other county officials. Under Alabama law, Sheriffs have legal custody and charge of all County Prisoners. Title 45, Section 115, Code of Alabama 1940 (Recompiled 1958). If the Legislature had intended to extend incentive good time under Act No. 182 to County Prisoners, it almost certainly would have made some provision for Sheriffs to administer the act as it applies to them. This conclusion is fortified by the fact that the Legislature did make just such a provision in the ordinary good time act which does apply to certain County Prisoners. For the foregoing reasons, it is the opinion of this office that Act No. 182, Alabama Acts 1976, does not apply to any County Prisoner. Accordingly, no County Prisoner can earn incentive good time under the provisions of that act regardless of whether he is confined at hard labor and regardless of his behavior.

The regular good time act, whose present version is Act No. 214, Third Special Session, Alabama Acts 1975, does apply to certain County Prisoners. By its express terms it applies to County Prisoners who are confined at hard labor for the county. Alabama law distinguishes between County Prisoners who are merely confined in the county jail and those who are confined at hard labor for the county. **E.g., Thompson v. State,** 19 Ala. App. 328, 330, 97 So. 258.

In Act No. 214, the Legislature conditioned the ordinary good time sentence reduction provided therein on faithful observation of all rules, in effect on good behavior. The last sentence of Section 1 provides that as to those County Prisoners to whom the act applies, it shall be administered by the Sheriff. This means that you, as Sheriff, should establish rules, regulations, and procedures for withholding time off for good behavior from an eligible County Prisoner when he breaks a jail rule or behaves badly. While you might want to refer to or even copy parts of the rules and regulations adopted by the Board of Corrections for State Prisoners, the ultimate responsibility for administering the act as it applies to County Prisoners is yours.

Your question concerning who has authority to release on their good time County Prisoners confined at hard labor can be answered by referring once again to the Sheriff's statutory authority and responsibility for administering Act No. 214 as it applies to County Prisoners. The Sheriff has the authority to release such prisoners when the length of their sentence minus the good time they have earned and not forfeited equals the time they have served. Careful records should be kept and great care taken not to discharge any prisoner before he is entitled to be released. **See,** Title 45, Section 106, Code of Alabama

1940 (Recompiled 1958). The maximum amount of time that can be deducted for good behavior from the sentence of any County Prisoner confined at hard labor is dependent on the length of his sentence and is set out in Act No. 214.

In summary, it is the official opinion of this office that:

1) No deduction from the sentence of any prisoner may be made except as authorized by law;

2) Act No. 182, Alabama Acts 1976, does not apply to any County Prisoner, and therefore no County Prisoner may be awarded the sentence reduction it provides, which is commonly called incentive good time;

3) County Prisoners confined at hard labor for the county may be awarded the sentence reduction provided by Act No. 214, Third Special Session, Alabama Acts 1975, which is commonly called ordinary good time;

4) Sheriffs are given the responsibility for administering Act No. 214 as it applies to County Prisoners confined at hard labor, and Sheriffs should establish rules, regulations, and procedures for withholding or forfeiting good time in cases of bad behavior.

5) Sheriffs have the authority to release County Prisoners confined at hard labor after the expiration of their sentences shortened by the amount of ordinary good time that they have received and not forfeited.

Nothing in this opinion is meant to apply to State Prisoners confined in county jails because of the federal court order. An opinion, dated October 14, 1975, concerning the application to them of the good time laws was issued by this office to Board of Corrections Commissioner Judson Locke, and a copy of it is enclosed.

It is hoped that this opinion answers all your questions, and if this office can be of further help let us know.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

March 31, 1977

Honorable Ronald L. Myers
District Attorney
37th Judicial Circuit
Lee County Courthouse
Opelika, AL 36801

Judicial Article — Juveniles — District Attorneys

1. Discussion of Section 5-125 of Judicial Article concerning admissibility of a child's preliminary statements.

2. Waiver of counsel by child over 14 years of age.

Opinion by Assistant Attorney General Knight

Dear Mr. Myers:

The Attorney General received your request for an opinion on the interpretation of Section 5-125 of the Judicial Article Implementation Act, which prohibits the use of the preliminary statements of a child unless the child is advised by counsel prior to a determination of the petition's allegations in a delinquency or in a need of supervision case or in a criminal proceeding prior to conviction.

You asked the following questions:

1. In the event a child is tried in the Circuit Court as an adult, does § 5-125 render inadmissible in such hearing or trial a statement made by a child in custody unless such child is affirmatively advised by an attorney prior to making such statement?

2. Does § 5-125 have applicability in a Juvenile proceeding only, or does it apply to a criminal trial in Circuit Court?

3. May a child over the age of fourteen years knowingly and intelligently waive the right to be advised by counsel?

Regarding your first question, it is the opinion of this office that in the event a child is tried in circuit court as an adult, Section 5-125 does render inadmissible in such trial a statement made by that child in custody unless the child was advised by an attorney prior to making such statement.

Section 5-125 prohibits the admissibility of a child's preliminary statements in two instances: (1) prior to the determination of the allegations of a petition in a delinquency case or in a case where the need of court supervision of the child is presented and (2) prior to conviction in a criminal proceeding. The second instance makes it clear that a preliminary statement of a child cannot be used in circuit court, unless the child has been advised by counsel, since a criminal proceeding involving the child would be held in circuit court. Rule 21 of the Rules of Juvenile Procedure, Alabama Rules of Court, embodies Section 5-125 and substantiates the above conclusion. The official comment to that Rule states that this Section limits those statements made afer the child has been taken into custody (on a criminal charge) or after a petition has been filed (in a delinquency or need or supervision case).

I think that the above conclusion negates consideration of the second question, in that Section 5-125 is applicable in juvenile proceed-

ings and when the child is tried as an adult in circuit court in a criminal proceeding.

In answer to your third question, the federal and state courts have stated that a knowing and intelligent waiver of counsel by a youth is a question of fact to be resolved by the consideration of all of the circumstances involved. The child's intelligence, age, educational background, the circumstances under which he was advised of his right to counsel and made his waiver among other things must be considered.

I hope your questions have been answered sufficiently. If our office can be of further assistance to you in any way, please do not hesitate to let us know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

INFORMAL OPINIONS

During the period January 1, 1977 through March 31, 1977 the Attorney General rendered the following informal opinions.

Subject	Addressee	Date	File
	— A —		
ABC BOARD			
Liquor Taxes—Refund— Alabama Sports Hall of Fame	Henry B. Gray, III	Feb. 2	ABC Board
Military Base—Liquor Off Base	Alvin Holmes	Mar. 1	116
ACUPUNCTURE			
Acupuncture—Physicians Only	Charles B. Martin	Mar. 10	96
AD VALOREM			
Gold Kist, Inc.—Agricultural Cooperative	Jeanette McClendon	Jan. 31	73
Homestead Exemption— County Cannot Increase	John L. Napier	Feb. 17	199
AIRPORT AUTHORITIES			
Airport Authorities—Utility Excise Tax	Edward Jackson	Feb. 18	227
ALABAMA DEVELOPMENT OFFICE			
Coastal Area Board—Expenses	Luther W. Hyde	Jan. 21	Coastal Area Board
ALABAMA PEACE OFFICERS' FUND			
Misdemeanor Tax—Remitted to Peace Officers' Fund	Robert Newman, Jr.	Mar. 24	149
ALABAMA SPORTS HALL OF FAME			
Liquor Taxes—Refund— Alabama Sports Hall of Fame	Henry B. Gray	Feb. 2	ABC Board

Subject	Addressee	Date	File
ALCOHOLIC BEVERAGES			
Military Base—Liquor Off Base	Alvin Holmes	Mar. 1	116
AMBULANCE SERVICE			
Fire Districts—Medical Service	H. Benson Carroll	Feb. 28	269
ANNEXATION			
City of Livingston—Annexation	Drayton Pruitt, Jr.	Feb. 18	13
City of Tuskegee—Annexation	T. Dudley Perry	Mar. 25	112
ASSESSMENTS			
Sewer Assessment—Flat Rate	John A. Russell, III	Mar. 31	174
	— B —		
BALDWIN COUNTY			
Baldwin County—Sheriff's Fees	Eunice B. Blackmon	Mar. 16	172
BANKING, DEPARTMENT OF			
Banking Assessment Fees—To Buy Car	Dennis M. Mitchell	Jan. 27	Banking Dept.
Credit Payments—In Order Of Transactions	C. S. Blackledge	Feb. 1	Banking Dept.
BLIND PERSONS			
Blind Persons—Vending Machines—State Property	Wayne Teague	Feb. 1	Educ. Dept.
BOARDS OF EDUCATION			
Teacher Terminated—A.E.A. Dues	Paul R. Hubbert	Jan. 11	A.E.A.
City Funds—City Board of Education	Wayne Teague	Feb. 1	Educ.
County Funds—Private School—Retarded Children	Bruce Gargis	Jan. 21	62

Mobile County Schools— Architectural Plan	Richard L. LoDestro	Mar. 9	123
Board Member—Substitute Teacher	James F. Berry	Feb. 1	323
BONDS			
Surface Mining Commission— Bond Amount	Thomas G. Walker, Jr.	Mar. 15	Surface Mining Reclamation Comm.
District Court Constable—Bond	Tony Reynolds	Mar. 21	220
BUILDING COMMISSION			
Walker State Tech. College— Construction Contract—Change Order	Harold Wade	Feb. 3	74
— C —			
CHEROKEE, TOWN OF			
Town of Cherokee—Promissory Note	Gene M. Hamby, Jr.	Feb. 25	121
CHIROPRACTORS			
Acupuncture—Physicians Only	Charles B. Martin	Mar. 10	96
County Hospital—Chiropractors—X-Rays	Jim Oakley	Mar. 8	115
CIRCUIT CLERKS & REGISTERS			
Circuit Clerk—County Supplement—Not Repealed	A. A. Chandler	Jan. 25	256
Perry County—Assistant Clerk	Floyd R. Cook	Mar. 23	262
Circuit Clerks—State Retirement System	Jimmy V. Lindsey	Mar. 9	124
Clerks and Registers— No Fees After 1-16-77	Charles Y. Cameron	Mar. 10	Court Management
Misdemeanor Tax—Remitted To Peace Officers' Fund	Robert Newman, Jr.	Mar. 24	149

Subject	Addressee	Date	File
Supernumerary Circuit Clerk—School Employee	E. Boyce Scruggs	Jan. 27	292
CIVIL DEFENSE DEPARTMENT			
Civil Defense—Liability	Hugh R. Smitherman, Sr.	Mar. 23	186
COASTAL AREA BOARD			
Coastal Area Board—Expenses	Luther W. Hyde	Jan. 21	Coastal Area Bd.
COLLEGES & UNIVERSITIES			
Livingston State—Restricting Use of Facilities	Asa N. Green	Jan. 28	119
COMPENSATION			
City Officers—Expense Allowance	William M. Bouldin	Mar. 17	179
Probate Judge—Washington County	John H. Armstrong	Feb. 10	225
COMPETITIVE BID LAW			
City of Mobile—Univ. of South Alabama—Computer Service Contract	William H. Brigham	Jan. 7	56
State Contract—No Vendor Available—Must Bid	Rankin Fite	Jan. 5	107
Contractor's License—At Time of Award	Dennis A. Moore	Mar. 25	118
COMPUTERS			
City of Mobile—Univ. of South Alabama—Computer Service Contract	William H. Brigham	Jan. 7	56
CONECUH COUNTY			
City of Evergreen—Funds—Conecuh County Hospital	David T. Hyde, Jr.	Jan. 27	27

CONFLICTS OF INTEREST			
City Attorney—Law Associate—Municipal Judge	Marcus E. McDonnell, Jr.	Jan. 24	66
Florala—City Council—Employee	Jack F. Inabinett	Jan. 20	81
City of Eufaula—Payment of Cited Bill	James L. Martin	Feb. 10	120
City Councilman—No Business With City	Don Fleming	Mar. 4	150
City Business—Councilwoman's Estate In Trust	Joe R. Carothers	Feb. 9	233
CONSERVATION DEPARTMENT			
State Building—Federal Land—Marion Fish Hatchery	John W. (Toppy) Hodnett	Feb. 1	Conservation Dept.
CONSTABLES			
Jefferson County—Constables—Travel Fee	Edwin A. Strickland	Mar. 22	88
District Court Constable—Bond	Tony Reynolds	Mar. 21	220
CONSTITUTIONALITY			
Tuscaloosa County—Park & Recreation Board—Proposed Bill	Edward Robertson	Mar. 8	158
Tuscaloosa County—Historical Preservation Authority	George W. Nichols, Jr.	Mar. 23	200
Tuscaloosa County—Historical Preservation Authority	George W. Nichols, Jr.	Mar. 23	200
CONSUMER CREDIT ACT			
Credit Payments—In Order of Transactions	C. S. Blackldege	Feb. 1	Banking Dept.
CONTRACTORS			
Contractor's License—At Time of Award	Dennis A. Moore	Mar. 25	118

Subject	Addressee	Date	File
CONTRACTS			
City of Mobile—Univ. of South Alabama—Computer Service Contract	William H. Brigham	Jan. 7	56
Univ. of So. Ala.—Contract Change—Medical School	W. S. Pipas	Feb. 10	79
Walker State Tech. College—Construction Contract—Change Order	Harold Wade	Feb. 3	74
Contract—Dauphin Island Park	Thomas M. Galloway	Feb. 23	98
Greene County—Construction Contracts—Increase	Robert Brown	Mar. 7	132
COOPERATIVES			
Gold Kist, Inc.—Agricultural Cooperative	Jeanette McClendon	Jan. 31	73
COSMETOLOGY, BOARD OF			
Cosmetology, Board—Travel Expenses—40 Days Limit	Billie K. Jehle	Jan. 5	Cosmetology Bd.
COUNTIES			
County Funds—Private School—Retarded Children	Bruce Gargis	Jan. 21	62
Circuit Judge—Secretary—County May Provide	Fred L. Huggins	Feb. 8	78
Greene County—Funds County Historic Commission	William M. Branch	Mar. 17	12
Retired Judge—Office Space	James Record	Mar. 7	92
Walker County—Commission Voting	Joe Meeks	Jan. 5	95
State Contract—No Vendor Available—Must Bid	Rankin Fite	Jan. 5	107

Private Medical Clinic Construction—No Tax Revenues	William J. Trussell	Feb. 28	192
COUNTY HOSPITAL BOARDS			
County Hospital—Chiropractors—X-Rays	Jim Oakley	Mar. 8	115
COURT MANAGEMENT			
Clerks and Registers— No Fees After 1-16-77	Charles Y. Cameron	Mar. 10	Court Mgt.
COURT REPORTERS			
Supplemental Salary—Court Reporters	Patrick H. Tate	Mar. 2	122
Judicial Article—Court Reporters—County Supplement	Idas Neal	Mar. 31	183
Supernumerary Status—Court Reporters	Louis Lackey	Mar. 9	191
COURTS			
District Attorneys—County Salaries—Judicial Article	William J. Benton	Feb. 23	111
CULLMAN, CITY OF			
Board Member—Substitute Teacher	James F. Berry	Feb. 1	323
— D —			
DAUPHIN ISLAND PARK			
Contract—Dauphin Island Park	Thomas M. Galloway	Feb. 23	98
DEED TAX			
Deed Tax—Title 51, §618	Harry D'Olive	Mar. 31	82
DENTAL EXAMINERS, BOARD OF			
Dental Hygienist—Exam Required	Walter L. Allen	Jan. 12	Dental Examiners

Subject	Addressee	Date	File
DENTISTS			
Dental Hygienist—Exam Required	Walter L. Allen, III	Jan. 12	Dental Examiners
DISTRICT ATTORNEYS			
District Attorneys—County Salaries—Judicial Article	William J. Benton	Feb. 23	111
DUAL COMPENSATION			
City Pension Member— Also County Employee	Don Priori	Jan. 25	104
DUAL OFFICEHOLDING			
Housing Authority Board— Industrial Development Board	Mrs. W. M. Griffin	Jan. 13	57
	— E —		
EDUCATION DEPARTMENT			
Blind Persons—Vending Machines—State Property	Wayne Teague	Feb. 1	Educ. Dept.
ELECTIONS			
Wet-Dry Vote—Voter Petition	Bobby Day	Feb. 18	184
EMPLOYERS & EMPLOYEES			
Mobile County—Temporary Employees	Mylan R. Engel	Feb. 10	89
Former City Employee—No Retirement	Jack H. Harrison	Feb. 3	105
Employee Retirement— Death Before Effective	James D. Harris, Jr.	Jan. 6	54
ETHICS COMMISSION			
Ethics Commission—One Non Merit System Employee	Melvin G. Cooper	Mar. 17	Ethics Comm.

EUFAULA, CITY OF			
City of Eufaula—Payment Of Cited Bill	James L. Martin	Feb. 10	120
EXEMPTIONS			
Gold Kist, Inc.—Agricultural Cooperative	Jeanette McClendon	Jan. 31	73
Homestead Exemption—County Cannot Increase	John L. Napier	Feb. 17	199
EXPENSES			
Cosmetology Board—Travel Expense—40 Day Limit	Billie K. Jehle	Jan. 5	Cosmetology Bd.
Lee County—Expenses For Subject Employee	Hal Smith	Feb. 8	86
Walker Co.—District Judges—Expense Allowance	Grady Perry	Feb. 14	84
Retirement Systems—Expense Fund—Trustees	David G. Bronner	Feb. 3	Retirement Systems
City Officers—Expense Allowance	William M. Bouldin	Mar. 17	179
Sheriff Expenses—Judicial Sales	Thomas H. Benton	Mar. 29	293
— F —			
FAMILY COURT			
Juvenile Court—Probation Officer—Warrants	F. W. Neumann, III	Jan. 31	127
FILING TAX			
Medical Clinic Board—Deed Privilege Tax—Sublease	I. T. Harbin	Mar. 16	139
Deed Tax—Title 51, §618	Harry D'Olive	Mar. 31	82
Extension Agreement—Mortgage Tax Due	I. T. Harbin	Mar. 18	139

Subject	Addressee	Date	File
FINES			
Misdemeanor Tax—Remitted to Peace Officers' Fund	Robert Newman, Jr.	Mar. 24	149
FIREARMS			
U. S. Officers/Employees—No Pistol Permit	Perry D. Mathis	Mar. 10	134
FIRE DISTRICTS			
Fire Districts—Medical Service	H. Benson Carroll	Feb. 28	269
FUNDS			
State Building—Federal Land—Marion Fish Hatchery	John W. Hodnett	Feb. 1	Conservation Dept.
City Funds—City Board of Education	Wayne Teague	Feb. 1	Educ. Dept.
County Funds—Private School—Retarded Children	Bruce Gargis	Jan. 21	62
Municipal Funds—Private Contract	John Newberry	Mar. 29	231
City of Mobile—Pay Employee for Book	William H. Brigham	Feb. 25	56
County Purchase—Desk Nameplate	James Record	Jan. 3	92
	— G —		
GADSDEN, CITY OF			
Gadsden Ordinance—City Clerk's Duties	Steve Means	Feb. 8	341
GAME & FISH			
State Building—Federal Land—Marion Fish Hatchery	John W. Hodnett	Feb. 1	Conservation Dept.
GASOLINE TAX			
Gas Tax Funds—Road Maintenance	E. D. Kennedy	Feb. 10	198
Gasoline Tax—City Cannot	Kenneth Sanders	Mar. 2	209

GENERAL CONTRACTORS, STATE LICENSING BOARD FOR			
Contractor's License—At Time of Award	Dennis A. Moore	Mar. 25	118
GREENE COUNTY			
Greene County—Funds—County Historic Commission	William M. Branch	Mar. 17	12
Greene County—Construction—Contract—Increase	Robert Brown	Mar. 7	132
— H —			
HEALTH & HEALTH DEPARTMENTS			
Public Water Supplies—Authority Over	Ira L. Myers	Jan. 6	Public Health
Solid Waste Disposal—Use of Packer Trucks	Betty W. Vaughan	Feb. 2	97
HIGHWAY DEPARTMENT			
Ass't. Highway Director—Legal Expenses	Ray Bass	Mar. 24	Highway Dept.
Subdivision Streets—Captive County—Highway Department Controls	Bruce Gargis	Mar. 28	62
HISTORICAL COMMISSION			
Capitol Restoration—Historical Comm. Funds	Warner Floyd	Feb. 8	Historical Comm.
HISTORICAL PRESERVATION AUTHORITIES			
Tuscaloosa County—Historical Preservation Authority	George W. Nichols, Jr.	Mar. 23	200
HOMESTEADS			
Homestead Exemption—County Cannot Increase	John L. Napier	Feb. 17	199

Subject	Addressee	Date	File
HOSPITALS			
County Hospital—Chiropractors—X-Rays	Jim Oakley	Mar. 8	115
City of Evergreen—Funds—Conecuh County Hospital	David T. Hyde, Jr.	Jan. 27	27
County Medical Board—Leases	James M. Oliver	Mar. 1	130
Private Medical Clinic Construction—No Tax Revenues	William J. Trussell	Feb. 28	192
HOUSING AUTHORITIES			
Housing Authority Board—Industrial Development Board	Mrs. W. M. Griffin	Jan. 13	57
Housing Authority—Board Members	Leonora I. Waldrop	Mar. 7	129
— I —			
INDUSTRIAL DEVELOPMENT BOARDS			
Housing Authority Board—Industrial Development Board	Mrs. W. M. Griffin	Jan. 13	57
INDUSTRIAL RELATIONS, DEPT. OF			
Surface Mining Act—Funds For Administration	Tom J. Ventress	Mar. 7	Industrial Relations
INSURANCE			
Hospital Insurance—City Employees	James P. Nix	Jan. 7	265
— J —			
JUDGES			
Circuit Judge—Secretary—County May Provide	Fred L. Huggins	Feb. 8	78

District Judge—Residence Requirement	Bill Jackson	Mar. 15	Governor's Office
Walker Co.—District Judges—Expense Allowance	Grady Perry	Feb. 14	84
Supernumerary Probate Judge—Contributions	Maury Friedlander	Jan. 27	91
Retired Judge—Office Space	James Record	Mar. 7	92
JUDICIAL ARTICLE			
Circuit Judge—Secretary—County May Provide	Fred L. Huggins	Feb. 8	78
District Judge—Residence Requirement	Bill Jackson	Mar. 15	Governor's Office
Walker County—District Judges—Expense Allowance	Grady Perry	Feb. 14	84
District Attorneys—County Salaries—Judicial Article	William J. Benton	Feb. 23	111
Supplemental Salary—Court Reporters	Patrick H. Tate	Mar. 2	122
Circuit Clerks—State Retirement System	Jimmy V. Lindsey	Mar. 9	124
Juvenile Court—Probation Officer—Warrants	F. W. Newmann, III	Jan. 31	127
Clerks and Registers—No Fees After 1-16-77	Charles Y. Cameron	Mar. 10	Court Mgt.
Judicial Article—Court Reporters—County Supplement	Idas Neal	Mar. 31	183
Circuit Clerk—County Supplement—Not Repealed	A. A. Chandler	Jan. 25	256
Perry County—Assistant Clerk	Floyd R. Cook	Mar. 23	262
JUVENILE COURT			
Juvenile Court—Probation Officer—Warrants	F. W. Neumann, III	Jan. 31	127

Subject	Addressee	Date	File
	— L —		
LABOR, DEPARTMENT OF			
Prevailing Wage Commissioner—Employees	Howard E. Hendrix	Mar. 24	Labor Dept.
LAMAR COUNTY			
Circuit Clerk—County Supplement—Not Repealed	A. A. Chandler	Jan. 25	256
LAW ENFORCEMENT			
Probation/Parole Supervisors—Law Enforcement—Longevity Pay	David H. Williams	Jan. 10	Pardons & Paroles
Chief of Police—Cannot Issue Warrant	James Earl Johnson	Feb. 2	100
Subsistence Allowance—Narcotic Inspectors	Ira L. Myers	Mar. 18	Public Health
Blue Lights/Siren—Rescue Squads	E. C. Dothard	Mar. 2	Public Safety
LEASES			
Property Sale—Industrial Development Act	Leland Pugh	Jan. 3	93
Medical Clinic Board—Deed Privilege Tax—Sublease	I. T. Harbin	Mar. 16	139
LEE COUNTY			
Lee Co.—Expenses For Subject Employee	Hal Smith	Feb. 8	86
LEGISLATION			
Tuscaloosa County—Park & Recreation Board—Proposed Bill	Edward Robertson	Mar. 8	158

LEGISLATURE			
General Acts—Pamphlets	Agnes Baggett	Mar. 22	Sec. of State
Youth Services Board—Sunset Law	James T. Strickland	Feb. 7	165
LIABILITY			
Civil Defense—Liability	Hugh R. Smitherman, Sr.	Mar. 23	186
LICENSES			
City of Coosada—Licensing	Oscar Ttate	Mar. 7	108
Municipality—Business License—No Zoning Ordinance	Oscar Ttate	Feb. 18	108
LICENSE COMMISSIONERS			
Walker County—License Commissioner—Merit System	Andy Naramore	Feb. 16	80
LICENSE TAGS			
Motor Vehicles—Ownership—Proof Required	Paul Thomas	Feb. 1	102
LINEVILLE, CITY OF			
Housing Authority—Board Members	Leonora I. Waldrop	Mar. 7	129
LIVINGSTON, CITY OF			
City of Livingston—Annexation	Drayton Pruitt, Jr.	Feb. 18	13
— M —			
MADISON COUNTY			
Retired Judge—Office Space	James Record	Mar. 7	92
MEDICAID			
Nursing Homes—Legal Fees—Medicaid Not Liable	Robert H. Holzworth	Feb. 4	Public Health

Subject	Addressee	Date	File
MEDICAL CLINIC BOARDS			
County Medical Board—Leases	James M. Oliver	Mar. 1	130
Medical Clinic Board—Deed Privilege Tax—Sublease	I. T. Harbin	Mar. 16	139
MEDICAL SERVICES ADMINISTRATION			
Nursing Homes—Legal Fees—Medicaid Not Liable	Robert H. Holzworth	Feb. 4	Public Health
MERIT SYSTEM			
Reserve Corps—No Veteran's Preference	Fred R. Jones	Jan. 10	83
Walker County—License Commissioner—Merit System	Phil Laird	Jan. 25	204
Civil Service—Russellville	Daniel G. McDowell	Mar. 14	274
MILITARY BASES			
Military Base—Liquor Off Base	Alvin Holmes	Mar. 1	116
MINES & MINING			
Walker County—Coal Severance Tax	Grady Perry	Feb. 4	84
City Zoning—Coal Surface Mining	Virgil Willett	Mar. 7	Surface Mining Reclamation Comm.
MOBILE BAY			
Mobile Bay—Landfill—Theodore Channel Project	Robert M. Hope	Mar. 1	State Docks
MOBILE, CITY OF			
City of Mobile—Univ. of South Alabama—Computer Service Contract	William H. Brigham	Jan. 7	56
City of Mobile—Pay Employee for Book	William H. Brigham	Feb. 25	56

MOBILE COUNTY			
Mobile County—Temporary Employees	Mylan R. Engel	Feb. 10	89
Mobile County Schools—Architectural Plan	Richard L. LoDestro	Mar. 9	123
MONTGOMERY, CITY OF			
City of Montgomery—Electrical Dept.	Greg Jones	Feb. 2	83
MORTGAGES			
Extension Agreement—Mortgage Tax Due	I. T. Harbin	Mar. 18	139
MOTOR VEHICLES			
Motor Vehicles—Ownership—Proof Required	Paul Thomas	Feb. 1	102
MUNICIPALITIES			
City Funds—City Board of Education	Wayne Teague	Feb. 1	Educ. Dept.
City of Evergreen—Funds—Conecuh County Hospital	David T. Hyde, Jr.	Jan. 27	27
City Clerk—Salary Increase	Janice Guin	Feb. 9	76
Florala—City Council—Employee	Jack F. Inabinett	Jan. 20	81
Property Sale—Industrial Development Act	Leland Pugh	Jan. 3	93
City Council—Salaries Diminished	Abraham S. Saliba	Feb. 7	94
Former City Employee—No Retirement	Jack H. Harrison	Feb. 3	105
City of Coosada—Licensing	Oscar Tate	Mar. 7	108
Municipality—Business License—No Zoning Ordinance	Oscar Tate	Feb. 18	108
City of Eufaula—Payment of Cited Bill	James L. Martin	Feb. 10	120
Town of Cherokee—Promissory Note	Gene M. Hamby, Jr.	Feb. 25	121
City Utility Board—Service Charge	John R. McConkey	Jan. 7	128
City Contributions—Employee Retirement	Charles E. Floyd	Feb. 17	135

Subject	Addressee	Date	File
City Council—Duties	Milton Terry Jordan	Feb. 1	143
City Councilman—No Business With City	Don Fleming	Mar. 4	150
Sewer Assessment—Flat Rate	John A. Russell, III	Mar. 31	174
Reciprocal Agreement—With Georgia City	James L. Martin	Feb. 15	120
Utility Board Member—Lives Outside City	Jack M. Brown	Feb. 17	187
Gas Tax Funds—Road Maintenance	E. D. Kennedy	Feb. 10	198
Oak Grove—Procedures	Virginia Womack	Feb. 8	61
Municipal Funds—Private Contract	John Newberry	Mar. 29	231
City Business—Councilwoman's Estate In Trust	Joe R. Carothers	Feb. 9	233
Hospital Insurance—City Employees	James P. Nix	Jan. 7	265
City of Mobile—Pay Employee for Book	William H. Brigham	Feb. 25	56
Gadsden Ordinance—City Clerk's Duties	Steve Means	Feb. 8	341

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NEPOTISM			
State Nepotism Law—Cities	Oscar H. Beard	Feb. 23	264
NON-SUPPORT			
Juvenile Court—Probation Officer—Warrants	F. W. Newmann, III	Jan. 31	127
NORTHPORT, CITY OF			
Sewer Assessment—Flat Rate	John A. Russell	Mar. 31	174
NURSING HOMES			
Nursing Homes—Legal Fees—Medicaid Not Liable	Robert H. Holzworth	Feb. 4	Public Health

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OAK GROVE, CITY OF			
Oak Grove—Procedures	Virginia Womack	Feb. 8	61
OFFICERS & OFFICES			
Walker Co.—Commission Voting	Joe Meeks	Jan. 5	95
Madison County—Elected Officials—State Retirement System	Julian D. Butler	Mar. 22	110
City Council—Duties	Milton Terry Jordan	Feb. 1	143
Utility Board Members—Lives Outside City	Jack M. Brown	Feb. 17	187
OPTOMETRY, ALABAMA BOARD OF			
Optometrists—Citizenship Not Required	Alton L. Turner	Feb. 17	Optometry, Board of
OPTOMETRISTS			
Optometrists—Ctiizenship Not Required	Alton L. Turner	Feb. 17	Optometry, Board of
ORDINANCES			
County Medical Board—Leases	James M. Oliver	Mar. 1	130
Gasoline Tax—City Cannot	Kenneth Sanders	Mar. 2	209
City Zoning—Coal Surface Mining	Virgil Willett	Mar. 7	Surface Mining Reclamation Comm
Gadsden Ordinance—City Clerk's Duties	Steve Means	Feb. 8	341
OZARK, CITY OF			
City Council—Salaries Diminished	Abraham S. Saliba	Feb. 7	94

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PARDONS & PAROLES, BOARD OF			
Probation/Parole Supervisors—Law Enforcement—Longevity Pay	David H. Williams	Jan. 10	Pardons & Paroles

Subject	Addressee	Date	File
PARKS			
Tannehill—Is State Park	James R. Bennett	Feb. 28	87
Tannehill State Park—Acess Road	James R. Bennett	Jan. 21	87
PERMITS			
City of Montgomery—Electrical Department	Fred Jones	Feb. 2	83
PERRY COUNTY			
Perry County—Assistant Clerk	Floyd R. Cook	Mar. 23	262
PISTOL PERMITS			
U. S. Officers/Employees—No Pistol Permit	Perry D. Mathis	Mar. 10	134
PROHIBITION			
Wet-Dry Vote—Voter Petition	Bobby Day	Feb. 18	184
PROPERTY			
Property Sale—Industrial Development Act	Leland Pugh	Jan. 3	93
PUBLIC HEALTH, DEPARTMENT OF			
Public Water Supplies—Authority Over	Ira L. Myers	Jan. 6	Public Health
Nursing Homes—Legal Fees—Medicaid Not Liable	Robert H. Holzworth	Feb. 4	Public Health
Subsistence Allowance—Narcotic Inspectors	Ira L. Myers	Mar. 18	Public Health
PUBLIC SAFETY, DEPARTMENT OF			
Blue Lights/Siren—Rescue Squads	E. C. Dotnard	Mar. 2	Public Health

RECORDERS COURT			
City Attorney--Law Associate—Municipal Judge	Marcus E. McConnell, Jr.	Jan. 24	66
RESCUE SQUADS			
Blue Light/Siren—Rescue Squads	E. C. Dothard	Mar. 2	Public Safety
RESIDENCY			
District Judge—Residence Requirement	Bill Jackson	Mar. 15	Governor's Office
RETIREMENT			
City Pension Member—Also County Employee	Don Priori	Jan. 25	104
Former City Employee—No Retirement	Jack H. Harrison	Feb. 3	105
City Contributions—Employee Retirement	Charles E. Floyd	Feb. 17	135
Employee Retirement—Death Before Effective	James D. Harris, Jr.	Jan. 6	54
RETIREMENT SYSTEMS			
Supernumerary Probate Judge—Contributions	Maury Friedlander	Jan. 27	91
Madison County—Elected Officials—State Retirement System	Julian D. Butler	Mar. 22	110
Circuit Clerks—State Retirement System	Jimmy V. Lindsey	Mar. 9	124
Retirement Systems—Expense Fund—Trustees	David G. Bronner	Feb. 3	Retirement Systems
Retirement—State Docks—Probation	David G. Bronner	Mar. 23	Retirement Systems
Employee Retirement—Death Before Effective	James D. Harris, Jr.	Jan. 6	54

Subject	Addressee	Date	File
ROADS & HIGHWAYS			
Subdivision Streets—Captive County—Highway Dept. Controls	Bruce Gargis	Mar. 28	62
RUSSELLVILLE, CITY OF			
Civil Service—Russellville	Daniel G. McDowell	Mar. 14	274
	— S —		
SALARIES			
City Clerk—Salary Increase	Janice Guin	Feb. 9	76
City Council—Salaries Diminished	Abraham S. Saliba	Feb. 7	94
District Attorneys—County Salaries—Judicial Article	William J. Benton	Feb. 23	111
Supplemental Salary—Court Reporters	Patrick H. Tate	Mar. 2	122
SCHOOLS			
Mobile County Schools—Architectural Plan	Richard L. LoDestro	Mar. 9	123
SECRETARY OF STATE			
General Acts—Pamphlets	Agnes Baggett	Mar. 22	Sec. of State
SHERIFFS			
Sheriff's Fund—Association Dues	Robert L. Turner	Jan. 4	275
Sheriff Expenses—Judicial Sales	Thomas H. Benton	Mar. 29	293
SOLID WASTE DISPOSAL ACT			
Solid Waste Disposal—Use of Packer Trucks	Betty W. Vaughan	Feb. 2	97
STATE DOCKS, DEPT. OF			
Mobile Bay—Landfill—Theodore Channel Project	Robert M. Hope	Mar. 1	State Docks

STATE PARKS			
Tannehill—Is State Park	James R. Bennett	Feb. 28	87
STREETS			
Reciprocal Agreement—With Georgia City	James L. Martin	Feb. 15	120
SUNSET LAW			
Youth Services Board—Sunset Law	James T. Strickland	Feb. 7	165
SUPERNUMERARY STATUS			
Supernumerary Probate Judge—Contributions	Maury Friedlander	Jan. 27	91
Circuit Clerks—State Retirement System	Jimmy V. Lindsey	Mar. 9	124
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